

NOTE: CHANGES MADE BY THE COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ROLEX WATCH U.S.A., INC.,

Plaintiff,

v.

WATCH EMPIRE LLC, et al.,

Defendants.

Case No. CV13-9221 SJO (FFMx)

**STIPULATED [PROPOSED]  
PROTECTIVE ORDER**

Honorable Frederick F. Mumm

**[PROPOSED] PROTECTIVE ORDER**

The parties expect that this case will require the parties to produce or disclose confidential information during the course of discovery which may include, for example, documents and information such as described in Paragraphs 3 and 4 below. To expedite the flow of discovery material, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that only materials the parties are entitled to keep confidential are subject to such treatment, and to ensure that the parties are

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permitted reasonably necessary uses of such materials in preparation for and in the conduct of trial in the above-captioned case, it is hereby ORDERED THAT:

Scope of the Order

1. This Order shall apply to all materials and information produced or provided in this litigation by, and all testimony given in any deposition on behalf of, plaintiff Rolex Watch U.S.A., Inc. or defendants (each of which is individually referred to herein as a “Party” or collectively as the “Parties”), or by or on behalf of any person or entity that is not a party hereto (a “Non-Party”). All such materials, information, and testimony is hereinafter referred to as “Litigation Materials.”

2. Litigation Materials and the information therefrom shall be used solely for the purpose of preparing for and conducting this litigation and shall not be disclosed except as under such restrictions as provided for in this Order.

Designation of Litigation Materials by Parties and Non-Parties

3. Litigation Materials may be classified and maintained as CONFIDENTIAL if they contain or constitute information that: (i) has not been made public by the producing or originating person or entity; and (ii) cannot be obtained from public sources; **and (iii) is confidential; and (iv) is subject to protection under the Federal Rules of Civil Procedure. (FFM)**

4. Litigation Materials may be classified and maintained as ATTORNEYS’ EYES ONLY if they contain or constitute information that: (i) has not been made public by the producing or originating person or entity, (ii) cannot be obtained from public sources, and (iii) disclosure of the Litigation Materials poses a significant risk of competitive or other harm to the producing, supplying, or originating person or entity; and (iv) the Litigation Materials relate to:

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1 (a) contacts and communications relating to prospective or  
2 actual agreements or contractual arrangements, and the financial terms thereof,  
3 with distributors, customers, or similar entities;

4 (b) financial information, including pricing information,  
5 financial data, cost information, sales information, units and values of sales,  
6 sales analyses by region or customer, and performance metrics and reports;

7 (c) technical, operational, and development information about a  
8 party's products;

9 (d) business plans, marketing strategies, new product plans and  
10 competitive analysis or strategies;

11 (e) information that is protected as a trade secret by the  
12 producing person or entity;

13 (f) documents or information as to which the producing Party  
14 has a pre-existing and continuing duty of confidentiality to a Non-Party,  
15 provided that the Non-Party in good faith required the producing Party to  
16 designate the documents or information ATTORNEYS' EYES ONLY as a  
17 condition of production or disclosure;

18 (g) documents or information as to which the producing person  
19 or entity has a pre-existing and continuing duty of confidentiality to another  
20 person or entity; or

21 (h) other highly sensitive documents or information that are  
22 similar in nature to the categories listed above in sections (a) through (g).

23 The provisions of this paragraph do not preclude a person or entity from  
24 asserting that such designated Litigation Materials are not discoverable at all.

25 5. Litigation Materials (including portions of deposition transcripts)  
26 designated as CONFIDENTIAL, or information derived therefrom, may be  
27 disclosed or made available only to the following persons:

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1 (a) to the Court and its officers and staff, including court  
2 reporters (through filing under seal, or at any trial or hearing);

3 (b) to outside counsel of record for the Parties (including legal  
4 and clerical staff employed or engaged by such counsel);

5 (c) no more than two (2) other persons such as officers,  
6 directors, or employees of the Parties to this action when such disclosure is  
7 deemed necessary to aid trial counsel in the prosecution, defense, or settlement  
8 of this action;

9 (d) to outside experts, consultants, advisors and/or translators  
10 retained to furnish technical or expert services and/or to give testimony with  
11 respect to the subject matter thereof for trial of this action; and

12 (e) to individuals and organizations that provide photocopying,  
13 document processing, imaging, translation, graphics, jury consulting,  
14 stenographic, and court reporting services.

15 6. Litigation Materials (including portions of deposition transcripts)  
16 designated as ATTORNEYS' EYES ONLY, or information derived therefrom,  
17 may be disclosed or made available only to the following persons:

18 (a) to the Court and its officers, including court reporters  
19 (through filing under seal, or at any trial or hearing);

20 (b) to outside counsel of record for the Parties (including legal  
21 and clerical staff employed or engaged by such counsel);

22 (c) to outside experts, consultants, advisors and/or translators  
23 retained to furnish technical or expert services and/or to give testimony with  
24 respect to the subject matter thereof for trial of this action; and

25 (d) to individuals and organizations that provide photocopying,  
26 document processing, imaging, translation, graphics, jury consulting,  
27 stenographic, and court reporting services.

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1           7. Any classification of Litigation Materials (or parts thereof) as  
2 CONFIDENTIAL or ATTORNEYS' EYES ONLY will be done by the  
3 producing person or entity applying in good faith the criteria outlined in  
4 Paragraphs 3 and 4 above. Litigation Materials may be produced for inspection  
5 by counsel prior to such designation without waiving any right to so designate  
6 materials before providing copies to the requesting Party.

7           (a) The inadvertent delivery of Litigation Materials that could  
8 properly be designated as CONFIDENTIAL pursuant to Paragraph 3 above, or  
9 ATTORNEYS' EYES ONLY pursuant to Paragraph 4 above, shall be without  
10 prejudice to the producing person or entity. If, after producing Litigation  
11 Materials, the producing person or entity determines that the produced  
12 Litigation Materials should have been designated as CONFIDENTIAL or  
13 ATTORNEYS' EYES ONLY, the producing person or entity shall promptly  
14 provide written notice to the receiving Party and shall provide the receiving  
15 Party with a replacement copy of the Litigation Materials bearing a  
16 CONFIDENTIAL or ATTORNEYS' EYES ONLY designation within five (5)  
17 court days after giving such written notice. The receiving Party shall either  
18 promptly return the undesignated Litigation Materials to the producing person  
19 or entity, or promptly provide the producing person or entity with notice that all  
20 such undesignated Litigation Materials have been destroyed. During the five (5)  
21 court day period following written notification that Litigation Materials should  
22 have been designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY,  
23 the receiving Party shall treat the undesignated Litigation Materials as though  
24 they have been so designated and shall retrieve all copies of the undesignated  
25 Litigation Materials for either return to the producing person or entity or to be  
26 destroyed.

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1 (b) If, after producing Litigation Materials, a producing person  
2 or entity discovers that the Litigation Materials were properly subject to  
3 protection under the attorney-client privilege or the attorney work product  
4 doctrine, the producing person or entity shall promptly provide written notice to  
5 the receiving Party that such Litigation Materials were inadvertently produced  
6 and properly subject to protection under the attorney-client privilege or the  
7 attorney work product doctrine. Upon receiving such written notice from the  
8 producing person or entity that privileged information or attorney work product  
9 material has been inadvertently produced, all such information, and all copies  
10 thereof, either shall be promptly returned to the producing person or entity, or  
11 shall be destroyed and the receiving Party shall promptly provide the producing  
12 person or entity with notice that all such documents have been destroyed. If the  
13 receiving Party disagrees with the designation of any such Litigation Materials  
14 as privileged or otherwise protected after conferring with the producing person  
15 or entity in good faith, the receiving Party shall nonetheless return such  
16 Litigation Materials to the producing person or entity as specified above, but  
17 may move the Court for production of the returned Litigation Materials. The  
18 producing person or entity shall retain all returned Litigation Materials for  
19 further disposition.

20 8. A producing person or entity may designate Litigation Materials as  
21 confidential pursuant to Paragraphs 3 and 5 above by marking each page of such  
22 materials with a stamp identifying this civil action and using the word  
23 CONFIDENTIAL, or by one of the following ways:

24 (a) If the Litigation Materials are not in paper form, the  
25 producing person or entity shall use other such reasonable means as necessary to  
26 identify clearly the Litigation Materials as CONFIDENTIAL.

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1 (b) If information disclosed during the course of a deposition is  
2 deemed CONFIDENTIAL by a person or entity, the designation thereof as  
3 CONFIDENTIAL shall be made either (i) by a statement on the record at the  
4 deposition identifying the testimony to be designated as CONFIDENTIAL or  
5 (ii) by providing written notice to the other Parties of the specific pages of the  
6 transcript that should also be so designated within thirty (30) days after receipt  
7 by counsel of an official copy of the deposition transcript. Such designation as  
8 CONFIDENTIAL will be applied to only those portions of the deposition  
9 transcript that include a specific question and response or series of questions and  
10 responses containing CONFIDENTIAL information.

11 9. A producing person or entity may designate its most confidential  
12 Litigation Materials pursuant to Paragraphs 4 and 6 above by marking each page  
13 of such materials with a stamp identifying this civil action and using the words  
14 ATTORNEYS' EYES ONLY, or by one of the following ways:

15 (a) If the Litigation Materials are not in paper form, the  
16 producing person or entity shall use other such reasonable means as necessary to  
17 identify clearly the Litigation Materials as ATTORNEYS' EYES ONLY.

18 (b) If information disclosed during the course of a deposition is  
19 deemed ATTORNEYS' EYES ONLY by a person or entity, the designation  
20 thereof as ATTORNEYS' EYES ONLY shall be made either (i) by a statement  
21 on the record at the deposition identifying the testimony to be designated as  
22 ATTORNEYS' EYES ONLY or (ii) by providing written notice to the other  
23 Parties of the specific pages of the transcript that should also be so designated  
24 within thirty (30) days after receipt by counsel of an official copy of the  
25 deposition transcript. Such designation as ATTORNEYS' EYES ONLY will be  
26 applied to only those portions of the deposition transcript that include a specific  
27 question and response or series of questions and responses containing  
28 ATTORNEYS' EYES ONLY information. Unless otherwise previously

1 designated, all depositions transcripts shall be treated as ATTORNEYS' EYES  
2 ONLY in their entirety prior to the end of such thirty (30) day period.

3 10. If counsel for a Party receiving Litigation Materials designated as  
4 CONFIDENTIAL or ATTORNEYS' EYES ONLY hereunder objects to such  
5 designation of any or all of such Litigation Materials, the following procedure  
6 shall apply:

7 (a) Counsel for the objecting Party shall serve on the designating  
8 person or entity a written objection to such designation, which shall describe  
9 with particularity the Litigation Materials in question and shall state the grounds  
10 for objection. Counsel for the designating person or entity shall respond in  
11 writing to such objection within five (5) court days, and shall state with  
12 particularity the grounds for asserting that the Litigation Materials are  
13 CONFIDENTIAL or ATTORNEYS' EYES ONLY. If no written response is  
14 made to the objection, the challenged Litigation Materials shall no longer be  
15 considered as designated under this Confidentiality Order, and the objecting  
16 Party shall treat such challenged Litigation Materials as if they had originally  
17 been produced without any designation of confidentiality. If the designating  
18 person or entity makes a timely response to such objection asserting the  
19 propriety of the designation, counsel shall then confer in good faith in an effort  
20 to resolve the dispute.

21 (b) If a dispute as to a CONFIDENTIAL or ATTORNEYS'  
22 EYES ONLY designation of Litigation Materials cannot be resolved by  
23 agreement, the Party objecting to the designation may move the Court for an  
24 order removing the challenged designation. The Litigation Materials that are  
25 the subject of the filing shall be treated as originally designated pending  
26 resolution of the dispute. Any motion regarding confidential treatment of  
27 documents will comply with the joint filing procedure for discovery disputes  
28 pursuant to Local Rule 37.



1           11. This Order shall not limit a Party's use of designated Litigation  
2 Materials in examining a witness at a deposition, hearing, or trial, even though  
3 such witness may not otherwise be entitled to view designated Litigation  
4 Materials under the terms of this Order, so long as the examination concerns  
5 designated Litigation Materials that the witness authored or previously had  
6 access to or knowledge of, as demonstrated by the designated Litigation  
7 Materials themselves or by foundation testimony during a deposition, hearing,  
8 or trial. This Order shall not prevent counsel from examining a witness in a  
9 good faith effort to determine whether the witness authored or previously had  
10 access to or knowledge of designated Litigation Materials.

11           12. Prior to disclosing any Litigation Materials designated by a Party  
12 as CONFIDENTIAL or ATTORNEYS' EYES ONLY to outside experts,  
13 consultants and/or advisors referred to in Paragraphs 5(d) and/or 6(c) above,  
14 counsel for the receiving Party making such disclosure shall:

15               (a) provide a copy of this Confidentiality Order to each such  
16 outside expert, consultant or advisor;

17               (b) obtain from the outside expert, consultant or advisor a fully  
18 executed undertaking in the form attached hereto as Exhibit A; and

19               (c) identify each such outside expert, consultant or advisor to  
20 whom disclosure is proposed to be made by providing to counsel for the  
21 producing Party, via overnight courier or same day hand delivery, same day  
22 facsimile or same day e-mail, a copy of each such expert's, consultant's or  
23 advisor's executed undertaking along with a current resume for each such  
24 expert, consultant or advisor. The expert's, consultant's or advisor's resume  
25 must identify all employers and clients for whom the consultant or expert has  
26 worked in the last four (4) years, as well as any litigation matters in which the  
27 expert, consultant or advisor has testified, either by way of expert report,  
28 deposition, or testimony at a hearing or trial, over the last four (4) years.

1           13. Counsel for the receiving Party making the disclosure shall not  
2 disclose materials designated CONFIDENTIAL or ATTORNEYS' EYES  
3 ONLY to any outside expert, consultant or advisor for a period of ten (10) court  
4 days from the date on which it provides to counsel for the producing Party the  
5 items specified in Paragraph 12(c) above. If within this ten (10) court day  
6 period counsel for the producing Party does not object, in writing, to the  
7 proposed disclosure to the expert, consultant or advisor identified pursuant to  
8 Paragraph 12(c) above, then counsel for the receiving Party shall be permitted to  
9 disclose the CONFIDENTIAL or ATTORNEYS' EYES ONLY materials to  
10 such identified expert, consultant or advisor. If, within this ten (10) court day  
11 period, counsel for the producing Party objects in writing to the proposed  
12 disclosure to the expert, consultant or advisor identified pursuant to Paragraph  
13 12(c) above, then counsel for the receiving Party shall not be permitted to  
14 disclose CONFIDENTIAL or ATTORNEYS' EYES ONLY materials to that  
15 expert, consultant or advisor, absent further order from the Court. The  
16 producing Party shall have the burden of filing a motion for protective order  
17 with the Court within five (5) court days of objecting to the outside expert,  
18 consultant or advisor prohibiting the disclosure of CONFIDENTIAL or  
19 ATTORNEYS' EYES ONLY materials to the independent expert, consultant or  
20 advisor to whom counsel for the producing Party has objected. If the five (5)  
21 court days elapse without the counsel for the producing Party seeking relief  
22 from the Court, the requested information may be shared with the identified  
23 outside expert, consultant or advisor in accordance with the terms of this  
24 Confidentiality Order.

25           14. If disclosure of CONFIDENTIAL documents or information is  
26 made to any person under Paragraph 5(c) above, counsel for the Party making  
27 the disclosure shall deliver a copy of this Order as entered to such person,  
28 explain its terms to such person, and secure the signature of such person on a

1 written undertaking in the form attached hereto as Exhibit A. Each Party shall  
2 maintain a file of all such signed copies of Exhibit A. Further, it shall be the  
3 obligation of counsel for the disclosing Party, upon learning of any breach or  
4 threatened breach of this Order, promptly to take all reasonable action to prevent  
5 the threatened breach or remedy an actual breach.

6 15. Litigation Materials designated as CONFIDENTIAL or  
7 ATTORNEYS' EYES ONLY shall be used by the persons receiving them  
8 solely for the purposes of preparing for and conducting this action and for no  
9 other action or proceeding. Persons receiving such Litigation Materials shall  
10 not use them for any business or other purpose, and shall not disclose them to  
11 any person not expressly permitted by the terms of this Confidentiality Order to  
12 have such access. All Litigation Materials designated as CONFIDENTIAL or  
13 ATTORNEYS' EYES ONLY shall be maintained by the receiving Party so as  
14 to preclude access by unauthorized persons. CONFIDENTIAL or  
15 ATTORNEYS' EYES ONLY Litigation Materials provided to an outside  
16 expert, consultant or advisor shall be kept at such person's offices in a manner  
17 designed to ensure against disclosures not authorized by this Confidentiality  
18 Order.

19 16. Nothing herein shall impose any restrictions on the use or  
20 disclosure by a Party or witness of its own Litigation Materials, or of documents  
21 or information obtained by such Party or witness independent of the discovery  
22 proceedings, inclusive of any discovery received from a Non-Party in this  
23 action, whether or not such documents or information are also obtained through  
24 discovery proceedings in this action.

25 17. Without written permission from the producing Party or a Court  
26 Order secured after appropriate notice to all interested persons, a Party may not  
27 file in the public record in this action any CONFIDENTIAL or ATTORNEYS'  
28 EYES ONLY material of the opposing Party, but must apply for leave to file

1 such CONFIDENTIAL or ATTORNEYS' EYES ONLY material under seal in  
2 conformance with the Court's rules and procedures, including Local Rule 79-5.  
3 CONFIDENTIAL or ATTORNEYS' EYES ONLY material filed under seal  
4 shall bear the title of this action, an indication of the contents of such sealed  
5 envelope or container, the words "CONFIDENTIAL INFORMATION AS  
6 DESIGNATED PURSUANT TO STIPULATED CONFIDENTIALITY  
7 ORDER" or "ATTORNEYS' EYES ONLY INFORMATION AS  
8 DESIGNATED PURSUANT TO STIPULATED CONFIDENTIALITY  
9 ORDER," as appropriate, and a statement substantially in the following form:

10 This envelope contains confidential information filed in this  
11 case by [name of party] and is not to be opened nor the contents  
12 thereof to be displayed or revealed except by order of the Court  
13 presiding over this matter.

14 18. On termination of this action, including all appeals, the receiving  
15 Party shall, at the election and instruction of the producing Party, either: (1)  
16 return to counsel for each producing Party or entity all Litigation Materials  
17 designated by the producing person or entity as CONFIDENTIAL or  
18 ATTORNEYS' EYES ONLY and all copies of such Litigation Materials and  
19 shall destroy all abstracts, digests and analyses thereof, however stored or  
20 reproduced; or (2) destroy and provide certification to the producing person or  
21 entity disclosing such Litigation Materials that the CONFIDENTIAL or  
22 ATTORNEYS' EYES ONLY Litigation Materials, including all abstracts,  
23 digests and analyses thereof, however stored or reproduced, have been  
24 destroyed. On termination of this action, counsel for each Party may maintain  
25 in its files one copy of CONFIDENTIAL or ATTORNEYS' EYES ONLY  
26 Litigation Materials as filed with or otherwise presented to the Court.

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1           19. The Parties' obligations under this Confidentiality Order shall  
2 survive the termination of the above captioned litigation, including subsequent  
3 appeals or later proceedings, for any retained Litigation Materials or  
4 information, extracts, summaries, notes, or compilations derived therefrom, and  
5 the Court shall retain jurisdiction to enforce the performance of said obligations.

6           **20. If a party to whom CONFIDENTIAL or ATTORNEYS' EYES**  
7 **ONLY material has been produced is subpoenaed or ordered by another**  
8 **court or administrative agency to produce information that is subject to**  
9 **this protective order, such party shall notify promptly the party who**  
10 **produced the material of the pending subpoena or order. It is the**  
11 **producing party's responsibility to take whatever action it deems**  
12 **appropriate to challenge the subpoena or order in the issuing court or**  
13 **agency. The party subject to the subpoena or order shall not produce any**  
14 **CONFIDENTIAL or ATTORNEYS' EYES ONLY materials in advance of**  
15 **the date required by the subpoena or order. Nothing herein shall be**  
16 **construed as relieving anyone subject to this order from any obligation to**  
17 **comply with a validly issued subpoena or order. (FFM)**

18           SO ORDERED AND SIGNED this 17<sup>th</sup> day of November, 2014.  
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20                               /S/ FREDERICK F. MUMM  
21                               Honorable Frederick F. Mumm  
22                               United States Magistrate Judge  
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**UNDERTAKING**

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3 1. I, \_\_\_\_\_, have  
4 read the foregoing Confidentiality Order (the "Order") and agree to be bound by  
5 its terms with respect to any Litigation Materials marked CONFIDENTIAL or  
6 ATTORNEYS' EYES ONLY that are furnished to me as set forth in the Order.

7 2. I further agree (i) not to disclose to anyone any Litigation Materials  
8 marked CONFIDENTIAL or ATTORNEYS' EYES ONLY other than as set  
9 forth in the Order, and (ii) not to make any copies of any Litigation Materials  
10 marked CONFIDENTIAL or ATTORNEYS' EYES ONLY furnished to me  
11 except in accordance with the Order.

12 3. I hereby consent to the jurisdiction of the United States District  
13 Court for the Central District of California, Western Division, with regard to  
14 any proceedings to enforce the terms of the Order.

15 4. I hereby agree that any Litigation Materials marked  
16 CONFIDENTIAL or ATTORNEYS' EYES ONLY furnished to me will be  
17 used by me only for the purposes of this litigation and for no other purpose, and  
18 will not be used by me in any business affairs of my employer or of my own or  
19 be imparted by me to any other person.

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21 Signature: \_\_\_\_\_

22 Date: \_\_\_\_\_  
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